

EXHIBIT 31

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

3 No. CJ-2017-816

4 - - - - - X

5 STATE OF OKLAHOMA, ex rel.,

6 MIKE HUNTER, ATTORNEY GENERAL

7 OF OKLAHOMA,

8 Plaintiff,

9 v.

10 (1) PURDUE PHARMA, L.P., et al.,

11 Defendants.

12 - - - - - X

13 COMPLETE CAPTION ON PAGE 2

14 - - - - - X

15 VOLUME I Pages 1-542

17 DEPOSITION OF RUSSELL PORTENOY, M.D.

18 Thursday, January 24, 2019, 10:49 a.m.

19 Shaheen & Gordon, P.A.

20 107 Storrs Street

21 Concord, New Hampshire 03301

23 -- Reporter: Kimberly A. Smith, CSR, CRR, CRC, RDR --

24 Realtime Systems Administrator

25 U.S. Legal Support

1 1990, which may be very different because -- than
2 the statement you would make today because the
3 science has changed, correct?

4 A. Correct.

5 MR. BECKWORTH: Objection.

6 BY MR. EHSAN:

7 Q. That doesn't make either statement false.
8 It just makes them appropriate for the time that
9 they were given, correct?

10 A. Yes.

11 MR. BECKWORTH: Objection.

12 BY MR. EHSAN:

13 Q. So when you were talking to folks in the
14 context of discussions you had about chronic
15 long-term opioid use, you always gave them fair and
16 balanced information; is that correct?

17 A. Yes. I tried to.

18 Q. And you've given those -- I just want to
19 separate two separate topic areas. Because I think
20 there was some conflation here between CMEs, which
21 are continuing medical education events; is that
22 correct?

23 A. Yes.

24 Q. And promotional speaking engagement, okay?

25 A. What are now called that.

1 Q. What are now called that?

2 A. What are now called those.

3 Q. Names change. But we'll stick with the CME
4 first.

5 A. Yes.

6 Q. In the context of a CME, who had control
7 over the content?

8 A. The speaker.

9 Q. So if it was you who was speaking, it would
10 have been you, correct?

11 A. Yes.

12 Q. Now, is it possible for a pharmaceutical
13 company to directly or indirectly provide financial
14 support for a CME?

15 A. Yes.

16 Q. In your experience, has a pharmaceutical
17 company ever dictated to you the content of a CME
18 where you disagreed about a particular point?

19 A. No.

20 Q. And there are strict rules and regulations
21 about disclosures when it comes to a CME, correct?

22 A. Yes. And as I mentioned before, those too
23 have been evolving over the years. Now they're
24 quite strict. They were less strict in the '80s and
25 '90s.

1 Q. I'm sorry. Please finish.

2 A. I think that was the statement I wanted to
3 make. Thank you.

4 MR. EHSAN: And just to kind of drive
5 this point . . .

6 MS. SPENCER: Are we done with the 1986
7 article?

8 MR. EHSAN: For now, yes.

9 (Portenoy Exhibit 32 was marked
10 for identification.)

11 BY MR. EHSAN:

12 Q. Doctor, the reporter has handed you what's
13 been marked as 32, I believe?

14 A. Yes.

15 Q. Exhibit 32. I'll give you as much time as
16 you like to look at it. But just looking at the
17 cover, do you recognize what it is?

18 A. Yes.

19 Q. And what is your recollection of what it is.

20 MS. SPENCER: I would give -- give me a
21 second to look at it and give him a moment to
22 familiarize himself with it.

23 MR. EHSAN: Sure.

24 MS. SPENCER: Thanks.

25 THE WITNESS: Yes.

1 conferences, which amounted, I believe, to eight
2 large conferences over ten years, were focused on
3 this interface between chronic pain and chemical
4 dependency. And typically more than half of that
5 two-and-a-half-day conference was focused on
6 addiction issues.

7 Q. How about issues of diversion?

8 A. At those conferences?

9 Q. Yes.

10 A. To my recollection, we invited speakers to
11 those conferences, individuals from law enforcement
12 that would help educate the audience, which the
13 audience comprised professionals, mostly physicians.

14 And the goal was to try to enhance
15 communication between law enforcement and physicians
16 so that physicians would understand what law
17 enforcement's expectations were with respect to
18 monitoring for diversion and what to do if it was to
19 occur, and reciprocally to try to educate people in
20 law enforcement about the medical community's issues
21 in trying to treat chronic pain.

22 Q. So would it be fair to say that the opioid
23 manufacturer provided you or your institutions
24 funding to facilitate education that directly went
25 to the risk associated with opioid prescribing?

1 MR. BECKWORTH: Objection.

2 MS. SPENCER: You can answer.

3 THE WITNESS: Yes. That's true.

4 BY MR. EHSAN:

5 Q. So that would be focusing on the negative
6 or the risk side of chronic opioid use, correct?

7 A. Yes.

8 Q. Now, doctor, we've gone through a whole lot
9 of science nerdy stuff, so I will try to distill
10 some of that down because sometimes I get into that
11 conversation and now it's just the two of us talking
12 and no one else understands what we're saying. But
13 maybe others do.

14 MR. BECKWORTH: Objection. Disrespectful
15 to the 12 people in the jury box.

16 BY MR. EHSAN:

17 Q. Doctor, would it be fair to say that at all
18 times, you provided the best possible and most
19 accurate information in your speaking -- Strike
20 that. Let me start more broadly.

21 You received money from opioid
22 manufacturers, correct?

23 A. Yes.

24 Q. It never influenced anything you said with
25 respect to saying something you didn't believe was

1 accurate, correct?

2 A. Correct.

3 Q. You also received funding for publications,
4 correct?

5 A. When you say "publications," you need to be
6 more specific.

7 Q. Sure. You received funding for studies,
8 correct?

9 A. Yes. Research studies.

10 Q. Research studies. And those fundings never
11 dictated to you anything about the conclusions or
12 your findings, correct?

13 A. That's correct.

14 Q. You gave a significant number of talks
15 related to opioid use; is that correct?

16 A. Yes.

17 Q. And in all of those talks, you tried to
18 present a fair and balanced presentation of the
19 science as we understood it at the time, correct?

20 A. Yes.

21 Q. Likewise, you never attended any speaking
22 engagement regardless of the context in which a
23 speaker provided information related to the use of
24 opioids that you did not find -- that you found to
25 be problematic or inappropriate or inaccurate,

1 correct?

2 A. I don't recall any.

3 Q. You have, in fact, given talks about
4 addiction, abuse, and diversion, correct?

5 A. I have given talks that have included
6 information about those areas, yes.

7 Q. Well, you have put on talks or conferences
8 that address abuse, addiction, and diversion,
9 correct?

10 A. Yes.

11 Q. And some of those talks were funded by
12 opioid manufacturers, correct?

13 A. Yes.

14 Q. As best as you recall, the labeling for
15 opioid medications included a section on the risks
16 and the benefits of the medication, correct?

17 A. Yes.

18 Q. And those included, at least in the 2000s
19 time period that we specifically talked about, a
20 discussion about addiction, diversion, and abuse,
21 correct?

22 A. Yes.

23 Q. And at least in the couple of instances
24 that you recalled, in a boxed warning, correct?

25 A. Yes.

1 Q. And as you testified, you encourage your
2 residents when you teach them to read the labeling
3 information for the medication they're prescribing,
4 correct?

5 A. No, I don't think I said that. When I
6 educate, whether it's residents or fellows, which is
7 a more common trainee level that I educate at --
8 these are people who have finished their residency
9 and getting extra training in pain medicine or in
10 palliative care, when I educate trainees or educate
11 colleagues, the emphasis is always on needing to
12 know what -- what -- needing to know the information
13 necessary to make judgments about what's safe and
14 effective for patients based on the specific
15 characteristics of the patient.

16 It hasn't been my practice to recommend
17 to everyone to read the package label. That has
18 never been an educational meme of mine, if you will.

19 However, including in my education
20 information about the pharmacology, how to optimize
21 the analgesic outcomes, what expectations should be
22 made for side effect monitoring and how to treat
23 side effects, and then to be aware of the risk of
24 abuse and addiction and in recent years how to
25 actually assess and manage that, that's always been

1 BY MR. ERCOLE:

2 Q. Yes. Take your time to get there.

3 A. Um-hum.

4 Q. The State asked you some questions earlier
5 about paragraph 30. Do you recall that?

6 A. Yes.

7 Q. And by "the State" -- and I mean --

8 MS. SPENCER: We know.

9 BY MR. ERCOLE:

10 Q. -- Mr. Beckworth, who's representing the
11 State here.

12 A. Yes.

13 Q. And Mr. Beckworth walked you through some
14 of the examples from (a) to (p) in that declaration,
15 correct?

16 A. Yes.

17 Q. So if you can turn to paragraph 30(c),
18 do you see that?

19 A. Yes.

20 Q. And it refers to, in paragraph 30(c),
21 a seminar titled "Breakthrough pain curriculum
22 development workshop"?

23 A. Yes.

24 Q. And in there, it says, "I believe this was
25 financed ultimately by Cephalon, Inc. related to its

1 drug Fentora"; do you see that?

2 A. Yes.

3 Q. Are you aware of anything false or
4 misleading in that seminar, "Breakthrough pain
5 curriculum development workshop"?

6 A. I don't have a specific recollection of
7 that workshop. As a general rule, I would say no,
8 there was nothing false or misleading in workshops
9 like that.

10 Q. And why would you say that as a general
11 rule?

12 A. I participated in a number of educational
13 programs devoted to breakthrough pain. Breakthrough
14 pain was a specific interest of mine. I developed
15 the first measurement tool for that type of pain and
16 was involved in designing the research protocols
17 that demonstrated how the short-acting drugs work
18 for breakthrough pain. So it was a specific area of
19 interest.

20 So I participated in a number of those
21 kinds of programs. And all the programs that I
22 participated in were CME programs that -- for which
23 I created my own messages, used my own slides.
24 There was never any effort on the part of a funding
25 company, the sponsor, to change my messages or ask

1 me to use specific slides.

2 Q. And paragraph 30(c) indicates that you were
3 compensated \$3,000 by Advanced Strategies in
4 Medicine.

5 Do you see that?

6 A. Yes.

7 Q. Was there anything wrong with being
8 compensated for putting together a seminar that was
9 neither false nor misleading?

10 A. No, I don't think so.

11 Q. If you turn to paragraph 30(e) -- Strike
12 that. The next sort of bullet down, paragraph 30(d),
13 do you see that?

14 A. Yes.

15 Q. It says, "On May 15, 2007, I worked on an
16 advisory board for Cephalon, Inc. concerning the
17 drug Fentora, for which I was compensated \$3,500"?

18 A. Yes.

19 Q. Did I read that correctly?

20 A. Yes.

21 Q. And are you aware of anything false or
22 misleading that was discussed at that advisory board
23 meeting on May 15, 2007?

24 A. I'm not aware of anything.

25 Q. Was there anything inappropriate about

1 being compensated for your work in connection with
2 that advisory board meeting?

3 A. No.

4 Q. And is it fair to say that that advisory
5 board meeting was an internal meeting at Cephalon?

6 Strike that. That's a bad --

7 MS. SPENCER: I was going to say, he can
8 answer if he recalls.

9 MR. ERCOLE: Fair enough.

10 BY MR. ERCOLE:

11 Q. In connection with that advisory board
12 meeting, was there any marketing done external in
13 connection with that?

14 MS. SPENCER: Objection.

15 You can answer if you recall.

16 THE WITNESS: Yeah. I don't recall this
17 specific meeting in 2007. So I really can't answer
18 that.

19 BY MR. ERCOLE:

20 Q. As a general matter, did advisory boards
21 engage in marketing?

22 A. No. As a general matter, the advisory
23 boards did not discuss marketing.

24 Q. And sitting here today, with respect to the
25 May 15, 2007 advisory board meeting for Cephalon,

1 you're not aware of any marketing that was done in
2 connection with that particular meeting?

3 A. I'm not aware of any, no.

4 Q. And you're not aware of anything false or
5 misleading said during that meeting, correct?

6 A. That's correct.

7 Q. Paragraph -- turn to the next paragraph,
8 paragraph 30(e). It says, "On November 6, 2007,
9 I presented a continuing medical education program,
10 'Meet the patients: Individualizing therapy for
11 persistent and breakthrough pain.' "

12 Do you see that?

13 A. Yes.

14 Q. Are you aware of anything false or
15 misleading -- Strike that.

16 In connection with that CME program, did
17 you independently develop the content of that
18 program?

19 A. I don't remember the specific program, but
20 I'll answer yes to that because I developed the
21 content for all of the educational programs that I
22 did.

23 Q. And with respect to any CME programs you
24 did for -- Strike that.

25 With respect to any CME programs that

1 were sponsored by Cephalon, is it fair to say that
2 Cephalon never controlled the content of those
3 programs?

4 A. That I was involved with?

5 Q. Yes.

6 A. Yes, it's fair to say that.

7 Q. And to the best of your recollection, the
8 November 6, 2007 CME program was no exception?

9 A. That's -- To the best of my recollection,
10 that's true.

11 Q. And it indicates in that paragraph that you
12 were compensated \$2,000 by Advanced Strategies in
13 Medicine; do you see that?

14 A. Yes.

15 Q. Anything improper about you being
16 compensated for your work in creating that CME?

17 A. I don't think so, no.

18 Q. If you go down to paragraph 30(j) --

19 A. Yes.

20 Q. -- it says, "On April 1, 2009, I
21 participated in a Fentora medical scientific
22 advisory board meeting"?

23 A. Yes.

24 Q. Do you see that?

25 A. Yes.

1 Q. And is the medical scientific advisory
2 board meeting referenced there the same type of
3 advisory board meeting that you've talked about
4 already?

5 A. I don't remember this specific meeting.
6 I remember, for example, participating in a meeting
7 in which we designed a new research protocol for
8 studying Fentora in -- as a repeated dose
9 administration.

10 So the answer is, it could have been on
11 a research protocol, or it could have been of the
12 type I mentioned before where we were talking about
13 the role of treating breakthrough pain as part of
14 pain medicine.

15 Q. Anything inappropriate that you recall
16 taking place on April 1, 2009?

17 A. No, not that I recall.

18 Q. Anything inappropriate or wrong from your
19 perspective in connection with participating in an
20 advisory board meeting for Fentora?

21 A. No.

22 Q. If you turn to paragraph 30(m), it says,
23 "In May 2010, I moderated an online program called
24 'Medico-legal issues, clinical guidelines and opioid
25 dose conversions.'"

1 BY MR. ERCOLE:

2 Q. Are you aware of Cephalon not disclosing
3 any relevant risks when communicating with the
4 public of its medicine?

5 A. I'm not aware of communications to the
6 public from Cephalon.

7 Q. And it goes on to say, "the risks
8 associated with opioid abuse and addiction were
9 known at that time."

10 Do you see that?

11 A. Yes.

12 Q. That would have been in 2004?

13 A. Yes.

14 Q. So in 2004, in your declaration, you're
15 confirming that the risks associated with opioid
16 abuse and addiction were known, correct?

17 A. Correct.

18 Q. And they would have been known within the
19 medical community, correct?

20 A. Yes.

21 Q. If you turn to paragraph 34 of your
22 declaration, I believe it's page 23.

23 A. Yes.

24 Q. It says, "I believe that, over the years,
25 some defendant drug companies have used my work to

1 promote opioids by referencing the positive
2 statements that I made repeatedly without providing
3 the background, analysis of the literature, and
4 cautions that accompanied these positive statements."

5 Do you see that?

6 A. Yes.

7 Q. Are you aware of any instances where
8 Cephalon did that?

9 MS. SPENCER: All you can answer is what
10 you know.

11 THE WITNESS: Yes. So I'm not aware of
12 an example where Cephalon has done that, no.

13 BY MR. ERCOLE:

14 Q. And you're not aware of an example of Teva
15 USA doing that?

16 A. No.

17 Q. If you turn to paragraph 35 of your
18 declaration. Do you see that, sir?

19 A. Yes.

20 Q. And I think it may be the fourth sentence
21 down. It says, "Although I personally was never
22 influenced to say things I did not believe," do you
23 see that?

24 A. Yes.

25 Q. What did you mean by that?

1 A. Essentially what we were saying before.
2 That in the funding that I received for educational
3 programs or in the funding that I received for
4 research projects, I personally was never asked to
5 craft a specific message or not -- not convey a
6 message that I originally put into some educational
7 materials or to do a specific kind of research or
8 change my research methodology. I haven't
9 personally experienced that.

10 Q. And if you keep going where there's a
11 reference to "they used the positive statements that
12 I made about opioids to portray opioid treatment as
13 safe and effective without the accompanying
14 discussion of risk that I included in the papers,
15 chapters, and lectures I produced beginning in the
16 1980s."

17 Do you see that?

18 A. Yes.

19 Q. Are you aware of any instance where
20 Cephalon did that with respect to opioids?

21 A. Yeah. I don't have any specific
22 recollection of that -- of those materials from
23 Cephalon.

24 Q. About Teva USA?

25 A. No.

1 Q. If you turn to paragraph 36.

2 A. Yes.

3 Q. It says -- last sentence there --

4 "I believe that the drug companies created material
5 that narrowly focused on the potential for safe and
6 effective treatment of chronic noncancer pain, some
7 of which was attributed to my work, but failed to
8 include an adequate and balanced discussion of the
9 limitations in the relevant science and the risks as
10 they were then known."

11 Do you see that?

12 A. Yes.

13 Q. Any instances where Cephalon did that?

14 MR. BECKWORTH: Objection.

15 MS. SPENCER: You can answer to the
16 extent that you know.

17 MR. BECKWORTH: Yeah. That's my
18 objection. Are you asking him if he remembers or if
19 there are, in fact, any?

20 MR. ERCOLE: Well, I appreciate the
21 objection. So I'll let the question stand.

22 BY MR. ERCOLE:

23 Q. And you can answer the question if --

24 A. Yeah. I don't recall any.

25 Q. So sitting here, you don't recall any

1 MR. ERCOLE: So just to get on the
2 record as you're --

3 MS. SPENCER: Yes, go ahead.

4 MR. ERCOLE: -- Dr. Portenoy, as your
5 counsel knows, Judge Hetherington indicated that the
6 State would have four hours, the defendants would
7 have six hours. Now, I appreciate it was a
8 recommendation, and I appreciate we've --

9 MS. SPENCER: That's not --

10 MR. ERCOLE: -- made that --

11 MS. SPENCER: I'll object. That's not
12 what the order provided.

13 MR. ERCOLE: Well, we --

14 MR. BECKWORTH: Told you.

15 MR. ERCOLE: -- we may disagree on that.
16 But fair enough. The request is obviously that I'd
17 like maybe 15 more minutes or so and we'll -- I'll
18 wrap up then.

19 MS. SPENCER: I will absolutely grant
20 you 15 more minutes. My understanding of the order,
21 and what my agreement is, is that you will have
22 equal time. So along those lines, I will also
23 permit Attorney Beckworth to ask 15 more minutes --
24 15 minutes' worth of questioning as well. And
25 that's equal time.

1 MR. ERCOLE: Sorry, sir. Before I was
2 interrupted by the back-and-forth here, I need to go
3 back and check where I was. I apologize for that
4 interruption.

5 MR. BECKWORTH: And while you're doing
6 that, just to be fair, to respect Amy's wishes, if
7 you don't go that long, that's fine. If you stop
8 now, I'll take the three or whatever we're over, to
9 be fair to everyone --

10 MR. ERCOLE: Thank you.

11 MR. BECKWORTH: -- meaning equal time.

12 BY MR. ERCOLE:

13 Q. So let me -- so my question is, are you
14 aware of any false or misleading statement said by
15 Teva USA that has caused any particular prescriber
16 to write an opioid prescription that was
17 inappropriate?

18 MR. BECKWORTH: Same --

19 THE WITNESS: No, not to my knowledge.

20 BY MR. ERCOLE:

21 Q. And certainly not in Oklahoma; is that fair
22 to say?

23 MR. BECKWORTH: Same objection.

24 THE WITNESS: Correct.

25

1 BY MR. ERCOLE:

2 Q. Are you -- Dr. Portenoy, are you aware that
3 Cephalon manufactures a drug by the name of Actiq?

4 A. Yes.

5 Q. And are you aware that Cephalon
6 manufactures a drug by the name of Fentora?

7 A. Yes.

8 Q. Have you ever prescribed Actiq or Fentora?

9 A. Yes.

10 Q. Have you ever prescribed Actiq or Fentora
11 for breakthrough pain in patients who do not have
12 cancer?

13 A. Yes.

14 Q. Can you describe some of those
15 circumstances where you've done that.

16 MS. SPENCER: Again, within the confines
17 of HIPAA, yes.

18 BY MR. ERCOLE:

19 Q. And I apologize. Yes. I don't need you to
20 disclose names or specific information. Just --

21 A. Yes.

22 Q. -- some examples where that has happened.

23 A. Well, I recall one patient who has a
24 diagnosis of a condition called medullary sponge
25 kidney. This patient makes kidney stones and has

1 have.

2 MR. BECKWORTH: There's no way that this
3 witness is going to have to come back in this case.
4 That's not true.

5 MR. ERCOLE: Well, if I don't get to ask
6 my questions, then I will probably --

7 MR. BECKWORTH: Sir, trials don't go on
8 forever.

9 MR. ERCOLE: Can I finish?

10 MR. BECKWORTH: No. You do not get --

11 MS. SPENCER: All right.

12 MR. BECKWORTH: You're not the
13 plaintiff. You don't get a rebuttal of a rebuttal.

14 MR. ERCOLE: It's not your decision.

15 MR. BECKWORTH: It's her decision.

16 MS. SPENCER: So where are we?

17 THE VIDEO OPERATOR: Eight hours,
18 38 minutes.

19 MR. ERCOLE: I can do it under five
20 questions.

21 MS. SPENCER: I'm going to say this.
22 If I give you each five more minutes --

23 MR. ERCOLE: I don't need five more
24 minutes.

25 MR. BECKWORTH: Five questions is fine.

1 MS. SPENCER: If I give you each five
2 more minutes, that's what I'm going to do. It's
3 fair, we don't have to come back here, we don't have
4 to argue about this. We can all get out of here.

5 MR. BECKWORTH: Brian said he can do it
6 in five questions, and I bet you I won't have any.

7 EXAMINATION

8 BY MR. ERCOLE:

9 Q. Dr. Portenoy, you have prescribed opioids
10 off-label; is that fair to say?

11 A. Yes.

12 Q. You've prescribed Actiq off-label, correct?

13 A. Yes.

14 Q. You've prescribed Fentora off-label?

15 A. I don't think I've used Fentora, no.

16 Q. Is it fair to say that in some situations,
17 off-label prescribing may form the appropriate
18 standard of care?

19 A. Yes.

20 Q. With respect to the off-label marketing
21 referenced in Plaintiff's Exhibit 7 --

22 A. Yes.

23 Q. -- do you have any knowledge one way or the
24 other -- personal knowledge one way or the other
25 whether Cephalon ever engaged in off-label promotion

1 in Oklahoma?

2 A. I have no personal recollection that I --

3 of that information, no.

4 Q. And you're not aware of anything in this
5 document that says Cephalon engaged in off-label
6 promotion in Oklahoma, correct?

7 A. Correct.

8 MR. ERCOLE: Thank you.

9 MR. PATE: That was six questions.

10 MS. SPENCER: But it was less than five
11 minutes, so we're good.

12 MR. BECKWORTH: We're done. I've got to
13 go to New Jersey.

14 THE VIDEO OPERATOR: The time is 10:33.
15 We're off.

16 (Deposition concluded at 10:33 p.m.)

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